

report; and

(6) the "tiers" into which the compliant phones fall.

68. We propose to adopt these reporting criteria and ask commenters to address whether they capture the appropriate information and level of detail. In particular, to clarify the information collection recommended in the Joint Consensus Plan, we propose to require both manufacturers and service providers to provide the model number and FCC ID directly associated with each model that they are reporting as compatible, together with the "M" and "T" rating that each such model has been certified as achieving under the ANSI C63.19 standard. We would accept the manufacturer's determination of whether a device is a distinct model consistent with the manufacturer's marketing practices, so long as models that have no distinguishing variations of form, features, or user capabilities, or that only differentiate units sold to a particular carrier, are not separately counted as distinct models to customers. We further propose to require that reports include the air interface(s) and frequency band(s) over which each compatible model operates. We seek comment on these proposed additional requirements. In addition, should we vary the information sought depending on the type of service provider (e.g., Tier I carrier vs. other service provider)?

69. We also seek comment on additional ways to improve the quality and usefulness of the reports, including whether we should require additional information beyond that proposed in the Joint Consensus Plan. Would a standardized form, template, or format facilitate accurate and complete reporting? Unless commenters support another process, we propose to authorize Commission staff to develop a standardized reporting format for collecting information. Moreover, if such a format could be created electronically, would this enable the Commission more effectively to monitor the overall state of industry compliance as compared to other alternatives? Would it be beneficial to integrate such a new format with the Commission's electronic database of equipment authorizations such that they cross-reference and update one another?

70. In addition, we seek comment regarding the schedule under which we should require future reports. Under the proposal contained in the Joint Consensus Plan, the Commission would adopt a staggered schedule whereby manufacturers would be required to provide an annual status report to the Commission beginning November 30, 2007, Tier I carriers would be required to provide an annual status report to the Commission six months later beginning May 30, 2008, and Tier II and III carriers would be required to provide an annual status report beginning May 30, 2009.¹⁵⁶ These reporting requirements would continue annually thereafter through the November report in 2012.¹⁵⁷ We seek comment on a tentative conclusion to adopt substantially this schedule, but with certain refinements. First, given the timing of this rulemaking proceeding, we expect that manufacturers and service providers will be required to comply with current rules for November 2007 reporting.¹⁵⁸ To the extent we maintain the current November 17, 2007 reporting deadline during the instant rulemaking, commenters should consider how the remaining schedule may need to be modified. For example, should we begin the staggered reporting process with manufacturers reporting again in May 2008 and Tier I carriers reporting in November 2008?¹⁵⁹ Commenters should also evaluate the advantages and disadvantages of requiring reports more often (e.g., every three or six months) and relate the burdens imposed versus the corresponding benefits.

¹⁵⁶ *Id.* at 11.

¹⁵⁷ *Id.*

¹⁵⁸ *See supra* note 144.

¹⁵⁹ This would maintain a 12 month period between service provider reports, but would require manufacturers to file one set of reports 6 months apart.

71. In addition, we question the Joint Consensus Plan proposal to adopt a delayed reporting requirement for Tier II and III carriers whereby their next reports would not be required until a year after the Tier I carriers' reports. In light of the recommendations in the *Staff Report* and our objectives described above, especially for consumers who receive service from such providers, we seek comment on whether it serves the public interest to delay their next reports for a period of 18 months to two years from their reports that will be submitted in November 2007, or whether they should instead be held to the same schedule as Tier I carriers in order to provide a steady source of information to consumers and to the Commission. Moreover, given that Tier II and III carriers have already been filing reports regularly, we seek comment on the extent of the burdens that would be avoided by postponing their first reports as proposed under the Joint Consensus Plan, balanced against the extent of information that would be lost by introducing a gap of 18 months or more in their reporting. Commenters should also address whether the reporting deadlines for Tier II and III carriers should depend on our adoption of staggered deployment deadlines.¹⁶⁰ Finally, if we adopt different reporting deadlines for Tier I versus Tier II and III carriers, we seek comment on the rules that should apply to resellers and to MVNOs.

2. Public Information and Outreach

72. In addition to the content and frequency of manufacturer and service provider reports, we seek comment on other ways to increase the availability of hearing aid compatibility information to consumers, service providers, and other interested parties. As explained in the *Staff Report*, the Commission's existing databases and websites are of limited value for these purposes.¹⁶¹

73. For example, although OET's equipment authorization database has information about hearing aid compatibility ratings associated with manufacturers' equipment, the database maintains such information based on FCC IDs, not handset model numbers,¹⁶² and it does not maintain a single clear, current record associated with each ID.¹⁶³ Thus, it is difficult – particularly for an inexperienced user – to search for hearing aid-compatible models based either on the manufacturer's name or on the model's FCC ID. Similarly, the Disability Rights Office (DRO) of the Consumer and Government Affairs Bureau maintains a website that explains the disability access rules and provides contact information for manufacturers and service providers, but this website does not include information regarding the compatibility of particular handset models.¹⁶⁴ As noted in the *Staff Report*, although a consumer wishing to file a complaint under Section 255 of the Communications Act¹⁶⁵ can locate the designated agent's name and contact information from the Commission's website, no similar information is available under the process governing complaints for violations of hearing aid compatibility requirements.¹⁶⁶

¹⁶⁰ See *supra* ¶ 51 (discussion of staggered deployment).

¹⁶¹ See *Staff Report* at ¶ 47.

¹⁶² We note that the Commission's Part 2 rules do not require manufacturers to submit model information. See, e.g., 47 C.F.R. § 2.924 (stating that marketing of electrically identical devices having different model/type numbers or trade names is permitted without further authorization).

¹⁶³ For each FCC ID, the database record contains all the permissive changes permitted under Part 2 of the Commission's rules. See *id.* § 2.1043(b).

¹⁶⁴ See <http://www.fcc.gov/cgb/dro/> (last visited July 8, 2007).

¹⁶⁵ See 47 U.S.C. § 255 (mandating that telecommunications equipment and services be accessible to persons with disabilities, if such access is readily achievable).

¹⁶⁶ See *Staff Report* at ¶ 48 n.135; Comments of the American Association of People with Disabilities in 2006 Biennial Regulatory Review, CG Docket No. 06-152 (filed Sept. 16, 2006) (suggesting that process for filing hearing aid compatibility complaints be made more consumer-friendly by making it more similar to the process for (continued....))

74. In recognition of these shortcomings, we seek comment on potential measures to improve the value of these databases and websites for parties seeking hearing aid compatibility information, including, for example, adding a relevant search function to the equipment authorization database or adding links to manufacturers' and service providers' websites from the DRO's web page.¹⁶⁷ In addition to the ongoing efforts of Commission staff to continue to improve information available to consumers, service providers, and other interested parties, we seek comment as to any specific measures the Commission should require or take. For example, should we require manufacturers to include in their equipment authorization filings the handset models associated with each FCC ID number, and to update this information when they introduce new models? Should we adopt new Part 2 rules to require a filing for permissive changes that includes trade names and model numbers?¹⁶⁸ We also request comment on whether to require manufacturers and service providers subject to the Commission's hearing aid compatibility rules to follow the same procedures as those applicable to Section 255 complaints, and to have the Commission publish hearing aid compatibility designated agents' contact information on the DRO website.¹⁶⁹ We seek comment on the benefits and costs of any such requirements, and on any alternatives that may further our objective with less potential burden. Are there other steps we can take to develop a single location or website where hearing aid users can find the ratings and model numbers of compliant handsets offered by manufacturers and service providers?

75. We also seek comment on how the Commission can encourage digital wireless handset manufacturers and service providers to engage in additional outreach efforts to assist consumers with hearing disabilities as they shop for wireless phones.¹⁷⁰ We note that HIA has recently announced that its member hearing aid manufacturers will voluntarily include in their user manuals information about compatibility with mobile phones. In this regard, the Joint Consensus Plan urges manufacturers and service providers to voluntarily post hearing aid compatibility ratings not only for handsets that meet the Commission's compatibility benchmarks but for all devices, including those rated M1 or M2.¹⁷¹ Although some service providers currently provide information on their company websites,¹⁷² the content varies and may not always be up to date. In addition, although wireless handset manufacturers at the time of the *Hearing Aid Compatibility Order* agreed to provide group information on wireless phones that provide hearing aid compatibility characteristics through a combined information source established by

(Continued from previous page)

Section 255 complaints). Under the hearing aid compatibility complaint process, consumers are responsible for identifying the agent designated by manufacturers or service providers for service of complaints under 47 C.F.R. § 68.418(b). We note that the Commission extended its Part 68, Subpart E rules to allow consumers to file informal complaints under those rules if they find that wireless service providers or manufacturers of wireless equipment are not complying with its hearing aid compatibility rules. See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16789 ¶ 95.

¹⁶⁷ See *Staff Report* at ¶ 48.

¹⁶⁸ See 47 C.F.R. §§ 2.924 & 2.1043.

¹⁶⁹ See *Staff Report* at ¶ 48 n.135.

¹⁷⁰ See *id.* at ¶ 96, citing letter from Carole M. Rogin, Executive Director, Hearing Industries Association to Linda S. Kahan, Deputy Director, Center for Devices and Radiological Health, Department of Health and Human Services, Food and Drug Administration, dated July 12, 2007 (filed in WT Docket No. 06-203).

¹⁷¹ See Joint Consensus Plan at 14.

¹⁷² See, e.g., <http://www.wireless.att.com/about/disability-resources/disability-resources.jsp>; <http://aboutus.vzw.com/accessibility/index.html>; http://www.nextel.com/en/about/community/hae_compliance.shtml; http://www.t-mobile.com/Company/Community.aspx?tp=Abt_Tab_Safety&tsp=Abt_Sub_TTYPolicy.

CTIA,¹⁷³ this resource currently does not provide information about service providers other than the four Tier I carriers.¹⁷⁴

76. Thus, as recommended in the *Staff Report*,¹⁷⁵ we seek comment on how best to promote the availability of useful hearing aid compatibility information on manufacturers' and service providers' websites, including whether we should not only encourage but require the posting of such information. We further seek comment as to what requirements or guidelines, if any, we should provide regarding the content of such postings. For example, should the information to be provided be modeled on the reporting criteria, discussed above, or should it be more limited? If manufacturers are required to meet a "product refresh" commitment,¹⁷⁶ should manufacturers and service providers be held to an outreach obligation specifically to inform the public about these new models?

77. Consistent with the recommendations in the *Staff Report*,¹⁷⁷ we also seek comment generally on any other ways that wireless manufacturers, service providers, and independent retailers can improve the effectiveness of their in-store testing, consumer education, and other consumer outreach efforts. These efforts would, ideally, include new ways of publicly identifying compliant phones for consumers and audiologists, as well as efforts that independent retailers could take to facilitate such identification. In addition, in order to assist consumers as they shop for wireless phones, we also ask whether there are additional steps the Commission can take to facilitate the flow of information between consumers, manufacturers, and service providers to meet our hearing aid compatibility outreach objectives.

D. Other Components of Joint Consensus Plan, and Related Proposals

78. As recommended in the *Staff Report*, we seek comment on several additional proposals in the Joint Consensus Plan, as well as on matters related to those proposals. Interested parties should discuss the advantages and disadvantages of these ideas and present any related hearing aid compatibility proposals or counter-proposals.

79. *Other Spectrum Bands.* The Joint Consensus Plan contains a request that the Commission apply the Commission's hearing aid compatibility rules to all spectrum bands that are used for the provision of CMRS in the United States, subject to standards development.¹⁷⁸ As discussed previously,¹⁷⁹ we determined earlier this year that all digital CMRS providers, regardless of the particular band in which they were operating, as well as manufacturers of handsets capable of providing such services, should be subject to the hearing aid compatibility requirements set forth in Section 20.19 to the extent that a service satisfies the scope provision for hearing aid compatibility set forth in our Part 20 rules.¹⁸⁰ We seek comment generally on whether any further action is necessary or appropriate in this regard, and in

¹⁷³ See www.accesswireless.org.

¹⁷⁴ See <http://www.accesswireless.org/accessibility/sites.cfm>.

¹⁷⁵ See *Staff Report* at ¶ 54.

¹⁷⁶ See *supra* ¶ 54.

¹⁷⁷ See *Staff Report* at ¶ 55.

¹⁷⁸ Joint Consensus Plan at 4.

¹⁷⁹ See *700 MHz Service Report and Order*, 22 FCC Rcd at 8117-8122 ¶¶ 142-50.

¹⁸⁰ The Commission also explained that it cannot impose hearing aid compatibility requirements for a band or service until applicable technical standards have been established. In recognition of the pressing need to develop applicable technical standards in certain frequency bands for which service rules have been or will soon be established, the Commission established a 24-month timetable for interested stakeholders to develop standards in these bands. *Id.*

particular on several specific questions that relate to the extension of hearing aid compatibility requirements to new frequency bands. First, we seek comment on how our current hearing aid compatibility requirements apply to mobile satellite service (MSS) providers that offer CMRS and whether any revisions to the hearing aid compatibility rules are appropriate respecting such providers, in order to promote consistent treatment for all CMRS providers that offer functionally equivalent services.¹⁸¹ In this regard, we ask commenters to address whether it should make a difference if an MSS provider offers service purely through a satellite-based network or through a combined network that relies on both satellite and ancillary terrestrial component (ATC) facilities.¹⁸²

80. Second, we agree with the recommendation in the *Staff Report* that standard-setting bodies should strive to develop hearing aid compatibility standards together with technical operating specifications for new frequency bands.¹⁸³ We seek comment on any measures that we should take to promote this practice.

81. Third, as noted above, the Commission has held that if a handset manufacturer or service provider offers a multi-band handset in order to comply with the hearing aid compatibility requirements, the handset must be hearing aid-compatible in each frequency band over which it operates.¹⁸⁴ We tentatively conclude to codify this requirement in Section 20.19 of the rules. We further tentatively conclude, consistent with this principle, that multi-band phones should not be counted as compatible in any band if they operate over frequency bands for which technical standards have not been established. We believe this limitation would conform with consumers' expectation that a phone labeled "hearing aid compatible" is compatible in all its operations. Treating such handsets as not compatible would also create incentives for industry bodies to develop compatibility standards for new frequency bands more quickly. We seek comment on this tentative conclusion.

82. Fourth, we note that the ANSI C63.19 standard includes target values for hearing aid compatibility validation procedures for operation over specific air interfaces at frequencies in the ranges of 800-950 MHz and 1.6-2.5 GHz.¹⁸⁵ In the *700 MHz Service Report and Order*, we stated that once technical standards are established for a new frequency band, the Commission would initiate a further proceeding to establish a specific timetable for deployment of hearing aid-compatible handsets in that band.¹⁸⁶ Accordingly, we tentatively conclude to revise Section 20.19(b) to include services operating over any frequencies within these two bands, to the extent they employ air interfaces for which hearing aid compatibility technical standards have been established and approved by the Commission. We seek comment on this tentative conclusion, including whether any other revisions to Section 20.19 are necessary in connection with the inclusion of these services.

¹⁸¹ See *Staff Report* at ¶ 75; see also 47 C.F.R. § 20.9(a)(10) (including MSS that involves the provision of commercial radio service directly to end users within the definition of CMRS).

¹⁸² See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L Band, and the 1.6/2.4 GHz Band, Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962 (2003) (permitting flexibility in the delivery of communications by MSS providers that operate in three sets of radio frequency bands: the 2 GHz MSS band (the 1990-2025 MHz uplink and the 2165-2200 MHz downlink), the L-band (general designation for frequencies from 1 to 2 GHz) and the Big LEO bands (referring to the 1.6/2.4 GHz bands).

¹⁸³ See *Staff Report* at ¶ 76.

¹⁸⁴ See *supra* ¶ 11 and note 31.

¹⁸⁵ *ANSI C63.19-2007 Standard* at 18, Table 4.2.

¹⁸⁶ *700 MHz Service Report and Order*, 22 FCC Rcd at 8119 ¶ 148.

83. In addition, we now seek comment on whether we can, and should, establish a mechanism under which hearing aid compatibility regulations would become applicable to future frequency bands as soon as, or within a defined period after, technical standards are established for relevant air interfaces.

Under our current rules, the Commission must modify Section 20.19 pursuant to rulemaking to add new services or new frequency bands. Amending Section 20.19 so that a rule change is not necessary every time technical standards are established for new services, new air interfaces, or new frequency bands potentially would bring the benefits of compatible handsets more quickly to consumers and would provide greater certainty to all affected parties. In addition, to the extent that manufacturers and service providers are already meeting their obligations to offer defined numbers or percentages of hearing aid-compatible handsets over previously covered services, the automatic extension of our rules to additional frequency bands may not impose significant additional burdens, and may even assist manufacturers and service providers in achieving compliance by permitting them to count multi-band models as compliant. We ask commenters to address both the benefits and the drawbacks of an automatic effectiveness regime, as well as what the specific rules should entail. Under existing rules, the Commission generally must approve revised versions of ANSI C63.19 for such revised standards to take effect for purposes of our hearing aid compatibility requirements.¹⁸⁷ Should a standard be considered "established" for a new frequency band upon its promulgation by C63, or should there be a process for the Commission or its staff to review or approve the standard, and if so what should that process be?

84. *Multi-Mode Handsets.* We tentatively conclude to adopt the proposal in the Joint Consensus Plan stating that multi-mode handsets do not satisfy Section 20.19 for any air interface unless they are compatible in all air interfaces over which they operate.¹⁸⁸ This approach is consistent with the Commission's previous holding regarding multi-band handsets.¹⁸⁹ We further tentatively conclude, consistent with our tentative conclusion regarding multi-band handsets, that multi-mode phones should not be counted as compatible in any mode if they operate over air interfaces for which technical standards have not been established. As explained above, we believe this rule would conform to consumers' expectations and would help promote the rapid development of compatibility standards for new air interfaces. We seek comment on these tentative conclusions and on any other potential measures to promote the development of compatibility standards for new air interfaces together with technical operating specifications.

85. *De Minimis Exception.* The Joint Consensus Plan proposes that the Commission retain the *de minimis* exception and clarify that it applies on a per-air interface basis.¹⁹⁰ In the Second Report and Order above, we conclude that the record compiled in response to the *Hearing Aid Compatibility Reconsideration Order and Further Notice* does not support any narrowing of the *de minimis* exception.¹⁹¹ We invite further comment on this question. In addition, the Commission has already clarified that the *de minimis* exception applies on a per-air interface basis, rather than across a

¹⁸⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63 (not discussing the inclusion of additional services, air interfaces, or frequency bands). The Chief, Wireless Telecommunications Bureau, in coordination with Chief, Office of Engineering and Technology, does have delegated authority to approve revised versions of ANSI C63.19 to the extent that the changes to the standard do not raise major compliance issues. *Id.*

¹⁸⁸ Joint Consensus Plan at 10.

¹⁸⁹ See *supra* ¶ 11 and note 31.

¹⁹⁰ Joint Consensus Plan at 10.

¹⁹¹ See *supra* ¶¶ 22-31.

manufacturer's or carrier's entire product line.¹⁹² We tentatively conclude that this clarification should be codified in our rules. We seek comment on this tentative conclusion.

86. *2010 Further Review.* The Joint Consensus Plan proposes that the Commission establish a further review of the hearing aid compatibility rules in 2010.¹⁹³ We tentatively conclude to adopt this proposal, and we seek comment. In particular, given the timing of the obligations we propose today, we seek comment on whether such a review would be more appropriate at a later date, such as in 2012. Once the proposed deployment deadlines have passed and the Commission can assess the effectiveness of any action we take arising out of our proposals herein, we may decide to add new or additional obligations, or on the other hand, reduce our oversight role if the state of competition or technology supports such action.

87. *Volume Controls.* Consistent with the Joint Consensus Plan's recommendation, we urge all interested parties to specifically look into adding volume controls to wireless handsets. As discussed in the *Staff Report*, some in the deaf and hard of hearing community state that one of the hearing aid users' most important concerns regarding wireless devices is the lack of adequate volume control on handsets.¹⁹⁴ We seek comment on whether any volume control requirements should be incorporated into our rules, and if so what they should be.¹⁹⁵

88. Similarly, the Technology Access Program of Gallaudet University has pointed out that the display screens on smart phones emit electromagnetic energy that may interfere with the operation of hearing aids.¹⁹⁶ We invite comment on this issue, including whether any measures are appropriate to promote the deployment of phones that enable users to turn off their screens.

E. Emerging Technologies

89. We seek comment on whether our hearing aid compatibility rules should be modified to address new technologies being used and offered by manufacturers and providers in their wireless handsets and networks. Under current Commission rules, manufacturers and service providers are required to meet the Commission's hearing aid compatibility standards only to the extent that handsets are associated with digital CMRS networks that "offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilize[] an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls."¹⁹⁷ We seek comment on whether we should extend some or a portion of the hearing aid compatibility requirements under Section 20.19 to wireless handsets that may fall outside the definition of CMRS and the criteria in Section 20.19(a), such as handsets that operate on unlicensed WiFi¹⁹⁸ networks that do not

¹⁹² See *supra* ¶ 29; *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 51. Thus, if a manufacturer or service provider offers two or fewer handset models capable of operating over a given air interface (including both single-mode and multi-mode models), it is not subject to benchmarks applicable to that air interface.

¹⁹³ Joint Consensus Plan at 12.

¹⁹⁴ See *Staff Report* at ¶ 66.

¹⁹⁵ We note that the Joint Consensus Plan does not propose adopting any rules in this regard.

¹⁹⁶ Comments of Technology Access Program of Gallaudet University in WT Docket No. 06-203 at 7.

¹⁹⁷ 47 C.F.R. § 20.19(a).

¹⁹⁸ WiFi (Wireless Fidelity) is a wireless technology that is based on the Institute of Electrical and Electronics Engineers (IEEE) 802.11 standards.

employ "an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs."¹⁹⁹

90. The *Staff Report* provides several examples of service providers offering access to VoIP applications over WiFi and other wireless technologies.²⁰⁰ For example, the report describes how wireless handset manufacturers are increasingly using WiFi to expand consumer access to VoIP services,²⁰¹ and it explains how some handsets being marketed today for voice telephony have dual-mode voice operability between unlicensed modes and the traditional licensed networks subject to Section 20.19.²⁰² The report also discusses handsets that combine voice operation over traditional licensed CMRS networks with WiFi data service.²⁰³ Consistent with our commitment under the Hearing Aid Compatibility Act of 1988, we agree with the recommendation in the *Staff Report* that the Commission should consider whether to change its rules to address these developments. With services using emerging technologies becoming increasingly popular with consumers, we seek comment on how to apply our hearing aid compatibility rules consistently and in a technology-neutral manner, and how to ensure that an appropriate selection of operating handset models continues to meet the needs of the deaf and hard of hearing community.

91. First, we seek comment generally on the application of our hearing aid compatibility rules to VoIP applications provided over wireless technologies such as WiFi and other emerging technologies. Under the Hearing Aid Compatibility Act, telephones used with public mobile services and private radio services are exempt from the general requirement that all newly manufactured telephones meet hearing aid compatibility standards, unless that exemption is lifted by the Commission.²⁰⁴ In 2003, the Commission partially lifted this exemption for telephones used with broadband PCS, cellular, and SMR services that offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.²⁰⁵ In doing so, the Commission crafted a tailored rule that not only recognized the extent of technical standards that had been established, but encompassed those services that were then almost exclusively used for interconnected mobile voice access. More recently, we expanded our rule to cover all digital CMRS that meet the criteria specified in the rule, subject to the existence of applicable standards, in recognition that similar services will soon be provided to the mass market outside of the previously identified bands.²⁰⁶

92. We ask commenters to address how current and anticipated future use of VoIP applications over wireless networks, both interconnected and non-interconnected, would be treated under the interaction of the Hearing Aid Compatibility Act and our rules. To the extent such services are not within the current scope of Section 20.19(a), are they exempt from hearing aid compatibility obligations, or would they fall under the general rule requiring hearing aid compatibility for all newly manufactured

¹⁹⁹ 47 C.F.R. § 20.19(a).

²⁰⁰ We note that VoIP is an application and can be provided over various frequency bands using any air interface, including those used to provide non-VoIP services.

²⁰¹ See *Staff Report* at ¶ 79.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ 47 U.S.C. § 610(b)(2).

²⁰⁵ 47 C.F.R. § 20.19(a); see *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16764-65 ¶ 26.

²⁰⁶ See *700 MHz Order*, 22 FCC Rcd at 8117-8120 ¶¶ 142-144.

telephones?²⁰⁷ If the latter, how would this requirement apply in the absence of established technical standards,²⁰⁸ or if there are different standards between, for example, cordless phones and mobile wireless phones both supporting VoIP and used by consumers in similar situations? Moreover, what constitutes a telephone in the context of new devices that more closely resemble mobile computers but have voice communications capabilities? Should we broaden or otherwise modify the scope of Section 20.19 in order both to maintain technological neutrality and to insure that hard of hearing consumers continue to have access to a selection of wireless services and features comparable to the general population? If so, how should any new language be crafted? Commenters suggesting changes are asked to address not only the policy reasons for their proposed revisions, but also the Commission's legal authority to adopt them under the Hearing Aid Compatibility Act and the Communications Act.

93. In addition, we solicit comment as to whether any new hearing aid compatibility rules are appropriate to address handsets that combine covered mobile voice operation with data services provided over WiFi networks or other emerging technologies. We note that such service combinations may be particularly attractive to deaf and hard of hearing consumers, but that our current rules do not necessarily require that any such handsets be hearing aid-compatible if the manufacturer and service provider satisfy their hearing aid compatibility benchmarks using other models.²⁰⁹ Elsewhere in this Notice, we tentatively conclude to adopt "product refresh" and "tiering" rules that are intended to ensure consumers who use hearing aids will have access to mobile handsets with a range of functionalities.²¹⁰ We seek comment as to whether these proposed rules appropriately promote the availability of hearing aid-compatible handsets that include data services provided over WiFi networks or other emerging technologies, or whether additional measures are needed. In this regard, we note that the requirements of Section 20.19 apply to handsets used with either voice or data services that fall within its terms.²¹¹ We seek comment as to the implications of imposing hearing aid compatibility requirements based on the provision of wireless data services, and whether this provision should be changed.

94. Finally, we invite broad comment on what additional regulatory obligations may be appropriate to address the issues raised by emerging wireless technologies, taking into account the statutory goal to promote equal access to communications equipment and services for consumers with hearing loss as well as economic, technological, and legal constraints.²¹² Regulation may be appropriate

²⁰⁷ See 47 U.S.C. § 610(b)(1); 47 C.F.R. § 68.4.

²⁰⁸ We note that we have authority to waive this requirement for new telephones, technologies, or services upon a showing that making such telephones hearing aid-compatible would be technologically infeasible or would increase costs to such an extent as to preclude successful marketing. 47 U.S.C. § 610(b)(3).

²⁰⁹ See *Staff Report* at ¶ 82 n.228 (noting that Apple's iPhone is not hearing aid-compatible, and that Apple is not known to be involved in any discussions regarding hearing aid compatibility).

²¹⁰ See *supra* ¶¶ 54-57.

²¹¹ 47 C.F.R. § 20.19(a); but see *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16765 ¶ 26 (stating that the rule would apply only to voice services).

²¹² We note that, in the *Wireless Broadband Internet Access Service Declaratory Ruling*, the Commission reiterated its commitment to effectuate the accessibility policy embodied in section 255 of the Communications Act and stated that it would continue to monitor the development of wireless broadband Internet access service and its effects on the policy goals of section 255. See *In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5921-22 ¶¶ 58-59 (2007). We note also that the Commission has extended disability access and telecommunications relay service requirements to providers of interconnected VoIP services. See *IP-Enabled Services, Implementation of Sections 255 and 251(a)(2); Access to Telecommunications Service, Telecommunications Equipment, and Customer* (continued....)

when new technology causes people with hearing disabilities to lose access, but we are unsure what the extent of any access problem may be and what measures may best address any such problem, and we therefore invite commenters to address this question. As emerging technologies progress, the deaf and hard of hearing community should be able to benefit to a similar degree as the mainstream population, as has been our goal under Section 20.19.

F. Networks using Open Platforms for Devices and Applications

95. In the *700 MHz Second Report and Order*, we required that licensees of the Upper 700 MHz Band C Block of spectrum provide "open platforms" for devices and applications to allow customers, device manufacturers, third-party application developers, and others to use the devices and applications of their choosing in C Block networks, subject to certain reasonable network management conditions that allow the licensee to protect the network from harm.²¹³ We explained that "handsets connected to the network but not actually offered by the provider do not alter the extent to which the provider has complied with . . . [our hearing aid compatibility] requirement[s]."²¹⁴ The open platform network mandate, however, may fundamentally alter the paradigm within which the hearing aid compatibility rules apply. As currently constituted, Section 20.19 of our rules imposes hearing aid compatibility obligations only on manufacturers and providers of services within its scope, including resellers and MVNOs.²¹⁵ With the growth of open platform networks, however, entities other than the traditional equipment manufacturers and service providers may become increasingly significant. For example, Skype Communications S.a.r.l. operates as an application developer providing software applications that ride over a service provider's network to enable VoIP communications. While the existing requirements on manufacturers,²¹⁶ together with the open platform requirements themselves, may be adequate to ensure sufficient hearing aid-compatible handset choice for consumers, we seek comment on whether any additional hearing aid compatibility requirements should be imposed in the context of open platform networks.²¹⁷

96. We seek comment both on whether to impose additional hearing aid compatibility requirements on manufacturers in the context of open platform networks, and on whether to extend any requirements to entities that are not currently covered. For example, should we modify our rules to require that for open platform networks for which they offer handsets, manufacturers must make available a certain number or percentage of hearing aid-compatible models to consumers through channels other than the service provider? In addition, we seek comment on whether and how to extend our hearing aid compatibility requirements to the responsible manufacturing party in joint venture situations. For example, if one partner produces phones on a build-to-suit basis for a second party that markets and prices

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Premises Equipment by Persons with Disabilities, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, *Report and Order*, 22 FCC Rcd 11275 (2007).

²¹³ In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket 06-150, *Second Report and Order*, 22 FCC Rcd 15289, 15365 ¶ 206 (2007) (*700 MHz Service Second Report and Order*). The Upper 700 MHz Band C Block is composed of 22 megahertz of spectrum at 746-757 MHz and 776-787 MHz. *Id.* at 15294 ¶ 4.

²¹⁴ *Id.*

²¹⁵ 47 C.F.R. § 20.19(a).

²¹⁶ Under our current rules, and under the revised rules proposed in this Notice, manufacturers are required to meet the Commission's hearing aid compatibility standards by producing a certain number or percentage of hearing aid-compatible handset models for service providers. These hearing aid compatibility requirements for manufacturers are codified in terms of what handsets they "must offer" to "service providers." See 47 C.F.R. § 20.19(c)(1), (d)(1).

²¹⁷ See *700 MHz Service Second Report and Order*, 22 FCC Rcd at 15365 ¶ 206.

the handset devices to service providers, which party should be held responsible for compliance in such a production/distribution scheme?

97. We also seek comment on whether and how to extend our hearing aid compatibility rules, including handset deployment, information, and outreach requirements, from service providers to other entities offering handsets to consumers within an open platform environment. For example, as discussed above, the record compiled in response to the notice portion of the *Hearing Aid Compatibility Order on Reconsideration and Further Notice* did not support extending in-store testing requirements beyond retail outlets owned or operated by service providers.²¹⁸ Considering the development of open platform networks, however, there may be a greater need for in-store testing by independent retailers or other third parties. We therefore seek comment on whether these or other rules should be revised in the context of open platform networks. We seek comment on the regulatory status under our current hearing aid compatibility rules of application developers and other potential new participants using open platform networks, and on whether any new hearing aid compatibility requirements should appropriately be imposed on such entities.

V. STAY OF FEBRUARY 18, 2008 REQUIREMENTS

98. As discussed above, under existing rules manufacturers and wireless service providers are required to ensure that, by February 18, 2008, at least 50 percent of their handset models over each air interface meet a U3/M3 (or higher) rating for RF interference reduction, as codified in Section 20.19 of our rules.²¹⁹ However, in the Notice we tentatively conclude to modify this particular hearing aid compatibility benchmark by including an alternative benchmark for February 18, 2008, as well as additional benchmarks for 2009-2011.²²⁰ In addition, we propose to impose new benchmarks for deploying handsets that meet standards for providing inductive coupling capability during 2008-2011.²²¹

99. We intend to issue a Report and Order addressing the issues raised in this Notice in the near future, in advance of the upcoming February 18, 2008 benchmark. In consideration of the need for certainty, and in order to provide appropriate notification to manufacturers and service providers as regards the hearing aid compatibility obligations, we determine that it is in the public interest to stay enforcement of that particular benchmark for 60 days, until April 18, 2008.

VI. PROCEDURAL MATTERS

100. *Ex Parte Rules.* Pursuant to Section 1.1206 of the Commission's *ex parte* rules, 47 C.F.R. § 1.1206, this rulemaking proceeding proposing the amendment of the Commission's rule governing hearing aid compatible telephones is a permit-but-disclose proceeding. Provided they are disclosed in accordance with the Commission's rules, *ex parte* presentations are permitted, except during the Sunshine Agenda period.

101. *Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. **Comments and reply comments should be filed in WT Docket No. 07-250.** Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

²¹⁸ See *supra* ¶ 27.

²¹⁹ See 47 C.F.R. § 20.19(c).

²²⁰ See *supra* Section IV.A.1.

²²¹ *Id.*

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

102. *Regulatory Flexibility Act.* Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 603, the Initial Regulatory Flexibility Act Analysis is set forth at Appendix C. We request written public comments on the Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines as the comments on the rest of the Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

103. *Initial Paperwork Reduction Act.* This Notice of Proposed Rulemaking contains

proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We note, however, that Section 213 of the Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, provides that rules governing frequencies in the 746-806 MHz Band become effective immediately upon publication in the Federal Register without regard to certain sections of the Paperwork Reduction Act. We therefore do not invite comment on any information collections to the extent they concern frequencies in the 746-806 MHz Band. In addition to filing comments with the Secretary, a copy of any PRA comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1-B441, Washington, D.C. 20554, or by sending an email to PRA@fcc.gov and to Nicholas A. Fraser, OMB desk officer, via the Internet to nfraser@omb.eop.gov or via fax at 202-395-5167.

VII. ORDERING CLAUSES

104. IT IS ORDERED that, pursuant to the authority of sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 610, this Second Report and Order and Notice of Proposed Rulemaking IS HEREBY ADOPTED.

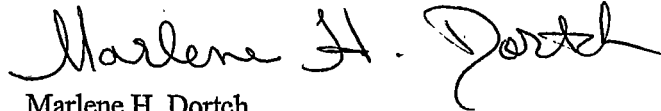
105. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days after publication of the Notice of Proposed Rulemaking in the Federal Register and reply comments on or before 45 days after publication in the Federal Register.

106. IT IS FURTHER ORDERED that the petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™ IS GRANTED to the extent set forth herein.

107. IT IS FURTHER ORDERED that, pursuant to the authority of section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the requirements of sections 20.19(c)(1)(ii), 20.19(c)(2)(ii), and 20.19(c)(3)(ii) of the Commission's rules, 47 C.F.R. §§ 20.19(c)(1)(ii), 20.19(c)(2)(ii), 20.19(c)(3)(ii), ARE STAYED until April 18, 2008.

108. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the Second Report and Order and Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marlene H. Dortch", written in a cursive style.

Marlene H. Dortch
Secretary

APPENDIX A

*Parties Filing Comments To 2005 Further Notice
Of Proposed Rulemaking*

Comments

Cingular Wireless LLC
Consumer Electronics Retailers Coalition (CERC)
RadioShack Corporation
Research in Motion Limited

Reply Comments

CompUSA
The Hearing Industries Association (HLA)
T-Mobile USA, Inc.

APPENDIX B

Proposed Rule In Joint Consensus Plan**§ 20.19 Hearing aid-compatible mobile handsets.**

(a) Scope of section. This section is applicable to providers of Broadband Personal Communications Services (Part 24, Subpart E of this chapter), Cellular Radio Telephone Service (Part 22, Subpart H of this chapter), and Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in Part 90, Subpart S of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. This section also applies to the manufacturers of the wireless phones used in delivery of these services.

(b) Technical standard for hearing aid compatibility. A wireless phone used for public mobile radio services is hearing-aid compatible for the purposes of this section if it meets:

1) For radio frequency interference: A minimum M3 rating as set forth in the standard document "American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids," ASC C63™ ANSI C63.19-2006 (published June 12, 2006) or, as hereinafter provided, ASC C63™ ANSI C63.19-2007 (published June 8, 2007) - available for purchase from the American National Standards Institute, provided that grants of equipment authorization issued under other versions of standard document ANSI C63.19 remain valid for hearing aid compatibility purposes;

(2) For inductive coupling: A minimum T3 rating as set forth in the standard document "American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids," ASC C63™ ANSI C63.19-2006 (published June 12, 2006) or, as hereinafter provided, ASC C63™ ANSI C63.19-2007 (published June 8, 2007) - available for purchase from the American National Standards Institute, provided that grants of equipment authorization issued under other versions of standard document ANSI C63.19 remain valid for hearing-aid compatibility purposes;

(3) For both radio frequency interference and inductive coupling only ASC C63™ ANSI C63.19-2007 shall be used after January 1, 2010, for obtaining a grant of equipment authorization;

(4) Manufacturers must certify compliance with the test requirements and indicate the appropriate rating or ratings for the wireless phone as set forth in § 2.1033(d) of this chapter; and

(5) All factual questions of whether a wireless phone meets the technical standard of this subsection shall be referred for resolution to the Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street SW, Washington, D.C. 20554.

(c) Phase-in for public mobile service handsets concerning radio frequency interference.

(1) Each manufacturer of handsets for use with public mobile services in the United States or imported for use in the United States must:

(i) Ensure at least thirty-three (33) percent of its handset offerings to service providers

for each air interface offered comply with § 20.19(b)(1) not later than February 18, 2008; and

(ii) Meet these requirements with respect to handsets that operate in United States bands set forth in § 20.19(a).

Note: For purposes of determining whether the number of models offered meets the thirty-three percent requirement, the number of models that results when the total number of models offered in the United States by a manufacturer is multiplied by thirty-three percent shall be rounded down to the nearest whole number, except that when a manufacturer produces four to six models, the calculation shall be rounded up to the nearest whole number in determining whether the thirty-three percent requirement is met.

(iii) Beginning in calendar year 2009, and for each year thereafter that it elects to produce a new model, offer a mix of new and existing models that comply with § 20.19(b)(1) according to the following requirements:

(A) For manufacturers that produce four or more total models per air interface, at least one-half of the minimum required M3 or better models shall be new models introduced during the calendar year;

Note: For purposes of calculating the number of new models to be produced under the refresh requirement of § 20.19(c)(1)(iii)(A), the number determined by multiplying the total number of new HAC models offered in the United States by fifty percent shall be rounded up to the nearest whole number. See the *de minimus* exception in § 20.19(e).

(B) For manufacturers that produce three total models per air interface, at least one new M3-or-better model shall be introduced every other calendar year; and,

(C) If a manufacturer introduces no new models in a calendar year, no refresh of M3-or-better models shall be required.

(2) Each Tier 1 carrier must ensure that at least fifty (50) percent of its handset models for each air interface comply with § 20.19(b)(1) by February 18, 2008, calculated based on the total number of unique digital wireless phone models the carrier offers nationwide, or alternatively:

(i) Ensure that at least eight (8) of its handset models for each air interface comply with § 20.19(b)(1) not later than February 18, 2008;

(ii) Ensure that at least nine (9) of its handset models for each air interface comply with § 20.19(b)(1) by February 18, 2009;

(iii) Ensure that at least ten (10) of its handset models for each air interface comply with § 20.19(b)(1) by February 18, 2010;

(iv) Ensure that at least ten (10) of its handset models for each air interface comply with § 20.19(b)(1) by February 18, 2011.

(3) In meeting the requirements of § 20.19(c)(2), each Tier 1 carrier must provide models from multiple tiers and offer for sale and make available in each retail store owned or operated by the carrier HAC handset models for consumers to test in the store.

(4) [Placeholder for all other (e.g., Tier 2 and 3) carriers]

(d) Phase-in for public mobile service handsets concerning inductive coupling.

(1) Each manufacturer offering to service providers four (4) or more handsets in an air interface for use with public mobile services in the United States or imported for use in the United States must offer to service providers a minimum of two (2) T3 or better models compliant with § 20.19(b)(2) rated on the basis of ASC C63™ ANSI C63.19-2006 by February 18, 2008, or if the following is greater in any given year:

(i) Ensure that at least twenty (20) percent of its handset offerings to service providers in that air interface comply with § 20.19(b)(2) not later than February 18, 2009, provided that, of any such models introduced during calendar year 2009, one model may be rated using ASC C63™ ANSI C63.19-2006, and all other models introduced during that year or subsequent years shall be rated using ASC C63™ ANSI C63.19-2007;

(ii) Ensure that at least twenty-five (25) percent of its handset offerings to service providers in that air interface comply with § 20.19(b)(2) not later than February 18, 2010; and

(iii) Ensure that at least thirty-three (33) percent of its handset offerings to service providers in that air interface comply with § 20.19(b)(2) not later than February 18, 2011.

Note: For purposes of determining whether the number of models offered meets the percentage requirements of § 20.19(d)(1), the number of models that results when the total number of models offered per air interface in the United States by a manufacturer is multiplied by the specified percentage shall be rounded down to the nearest whole number.

(2) Each Tier 1 carrier must ensure at least thirty-three (33) percent of its handset offerings calculated based on the total number of unique digital wireless phone models the carrier offers nationwide for each air interface offered comply with § 20.19(b)(2) by February 18, 2008, or alternatively:

(i) Ensure that at least three (3) of its handset models for each air interface comply with § 20.19(b)(2) by February 18, 2008;

(ii) Ensure that at least five (5) of its handset models for each air interface comply with § 20.19(b)(2) by February 18, 2009;

(iii) Ensure that at least seven (7) of its handset models for each air interface comply with § 20.19(b)(2) by February 18, 2010, and

(iv) Ensure that at least ten (10) of its handset models for each air interface comply with § 20.19(b)(2) by February 18, 2011.

(3) In meeting the requirements of § 20.19(d)(2), each Tier 1 carrier must provide models from multiple tiers and offer for sale and make available in each retail store owned or operated by the carrier HAC handset models compliant with § 20.19(b)(2) for consumers to test in the store;

(4) [Placeholder for all other (e.g., Tier 2 and 3) carriers]

(e) *De minimis* exception.

(1) Manufacturers or mobile service providers that offer two or fewer digital wireless handsets in an air interface in the U. S. are exempt from the requirements of this section in that air interface. Mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless phone models in an air interface in the U. S. are likewise exempt from the requirements of this section in that air interface.

(2) Manufacturers or mobile service providers that offer three digital wireless handset models in an air interface must offer at least one compliant phone model in that air interface. Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless phone models in an air interface in the U.S. are required to offer at least one compliant handset model in that air interface.

(f) *Labeling requirements.* Handsets used with public mobile services that are hearing-aid compatible, as defined in § 20.19(b) of this chapter, shall clearly display the rating, as defined in § 20.19(b)(1)(2) on the packaging material of the handset. An explanation of the ASC C63™ C63.19 rating system shall also be included in the device user's manual or as an insert in the packaging material for the handset.

(g) *Reporting dates.* The annual reporting date for manufacturers to report compliance with the requirements of this section shall be November 30; the annual reporting date for carriers to report compliance with the requirements of this section shall be May 30, provided that Tier 1 carriers shall file their first such report on May 30, 2008, and Tier 2 and 3 carriers shall file their first such report on May 30, 2009.

(h) *Enforcement.* Enforcement of this section is hereby delegated to those states which adopt this section and provide for enforcement. The procedures followed by a state to enforce this section shall provide a 30-day period after a complaint is filed, during which time state personnel shall attempt to resolve a dispute on an informal basis. If a state has not adopted or incorporated this section, or failed to act within six (6) months from the filing of a complaint with the state public utility commission, the Commission will accept such complaints. A written notification to the complainant that the state believes action is unwarranted is not a failure to act. The procedures set forth in Part 68, Subpart E of this chapter are to be followed.

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in this Notice of Proposed Rulemaking, WT Docket No. 07-250.² Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on page one of this Notice. The Commission will send a copy of this Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, this Notice and IRFA (or summaries thereof) will be published in the Federal Register.⁴

2. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,⁵ the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this Notice, including spectrum in the 746-806 MHz Band.

A. Need for, and Objectives of, the Proposed Rules

3. In the Notice, the Commission reexamines existing hearing aid compatibility requirements to ensure that they will continue to be effective in an evolving marketplace of new technologies and services. The Commission undertakes this review in accordance with its commitment in the 2003 *Hearing Aid Compatibility Order* to initiate a new rulemaking proceeding to evaluate: "(1) whether to increase [or] decrease the 2008 requirement to provide 50 percent of phone models that comply with a U3⁶ rating; (2) whether to adopt [hearing aid compatibility] implementation benchmarks⁷ beyond 2008; and (3) whether to otherwise modify the [hearing aid compatibility] requirements."⁸ To assist in forming

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, WT Docket No. 01-309, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™, *Notice of Proposed Rulemaking*; FCC 07-192, (rel. Nov. 7, 2007) (*Notice*).

³ See 5 U.S.C. § 603(a).

⁴ *Id.*

⁵ In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106-113, 113 Stat. 2502, App. E, Sec. 213(a)(4)(A)-(B); see 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)-(B).

⁶ See *Notice* at ¶ 11 (defining U3 rating).

⁷ See *Notice* at ¶¶ 36-40 (defining existing benchmarks).

⁸ See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Report and Order*, 18 FCC Rcd 16753, 16782 ¶ 74 (2003); *Erratum*, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*).

the basis for initiating this rulemaking, the Wireless Telecommunications Bureau (WTB), in WT Docket No. 06-203, recently released the *Staff Report*, which examines recent developments and includes several recommendations for measures to facilitate further implementation of the Commission's hearing aid compatibility requirements.⁹ The proposals set forth in the Notice draw upon recommendations proposed in the *Staff Report*.

4. Several of these proposals, in turn, are based on an interconnected set of rule changes set forth in a consensus plan (Joint Consensus Plan) recently developed jointly by industry and representatives for the deaf and hard of hearing community. The specifics of the Joint Consensus Plan are contained in the Supplemental Comments of the Alliance for Telecommunications Industry Solutions (ATIS), which were submitted as part of the record in WT Docket No. 06-203.¹⁰ First, the Joint Consensus Plan proposes several changes to the deadlines and other provisions requiring service providers and manufacturers to make available certain types of hearing aid-compatible phones, including: (1) "provid[ing] Tier I carriers with an alternative to the 50 percent rule for M-rated phones"; (2) "increas[ing] the number of T3-or-better phones that Tier I carriers must make available"; (3) "requir[ing] manufacturers to offer thirty three (33) percent of wireless phones at the M3-or-better level"; and (4) requiring "each manufacturer not subject to the *de minimis* exception . . . [to] produce at least two or more T3-or-better handsets."¹¹ These changes include new rules requiring manufacturers each year to include a certain number of new products among their hearing aid-compatible models, and requiring Tier I carriers to provide hearing aid-compatible models from multiple tiers of functionality.¹² Second, the Joint Consensus Plan proposes a transition to phase-in the 2007 version of the ANSI C63.19 standard for hearing aid compatibility testing.¹³ Third, the Joint Consensus Plan proposes that service providers and manufacturers report regularly on the availability of products under updated criteria for information submissions.¹⁴ Finally, to further accessibility to hearing aid-compatible phones, the Joint Consensus Plan proposes other steps that the Commission should take to adequately address hearing aid compatibility of wireless handsets.¹⁵

5. Although the Notice tentatively concludes substantially to adopt new M3- and T3-rated handset deployment benchmarks through 2011, and a related requirement to offer handsets with different levels of functionality, for Tier I carriers only,¹⁶ it also seeks comment on the appropriate regime for smaller service providers. In addition, the Notice tentatively concludes to adopt new deployment

⁹ See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, WT Docket No. 06-203, *Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements*, DA 07-4151 (WTB rel. Oct. 5, 2007) (*Staff Report*).

¹⁰ See Supplemental Comments of ATIS in WT Docket No. 06-203 (filed June 25, 2007) (Joint Consensus Plan).

¹¹ *Id.* at 4, 9 n.14.

¹² *Id.* at 4, 12.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ See, e.g., Notice at ¶¶ 78-88.

¹⁶ The four nationwide, terrestrial CMRS carriers, AT&T Services, Inc., Verizon Wireless, Sprint Nextel, and T-Mobile USA, are considered Tier I carriers. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, *Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002) (*Non-Nationwide Carriers Order*). No Tier I carriers are small entities.

benchmarks for all manufacturers, subject to a *de minimis* exception for certain manufacturers with small product lines. Moreover, the Commission also tentatively concludes that the following steps that might affect small businesses are needed to meet its objectives: (1) implement a "product refresh" rule for manufacturers; (2) adopt, after a suitable phase-in period, the use of a single version of the ANSI C63.19 standard, ANSI C63.19-2007; and (3) adopt new content and timelines for hearing aid compatibility reporting requirements. In the context of several of these tentative conclusions, the Commission requests comment on possible compliance requirements not included within the Joint Consensus Plan's framework. For example, the Commission seeks comment on the possibility of staggered handset deployment deadlines for different classes of service providers and manufacturers, additional reporting/outreach obligations, and other measures that may impact small entities. In addition, following upon the recommendations in the *Staff Report*, the Notice invites comments on new hearing aid compatibility issues implicated by recent developments relating to provision of Voice over Internet Protocol (VoIP) over wireless platforms, as well as "open platform" networks. The Commission is open to comment on what, if any, requirements it should, or should not, impose for small entities if it adopts new rules based on the proposals in the Notice.

6. To promote compatibility between digital wireless telephones and hearing aids, this Notice could result in rule changes that, if adopted, would create new opportunities and obligations for several categories of wireless service providers, as well as manufacturers of wireless handsets. The Commission's hearing aid compatibility rules apply to providers of digital CMRS that "offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilize[] an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls," as well as to manufacturers of wireless phones used in the delivery of such services.¹⁷ In this regard, the Commission determined earlier this year to extend hearing aid compatibility requirements to all services that meet these criteria, regardless of the particular band in which they operate, once applicable technical standards are established in the relevant bands.¹⁸ Accordingly, the rule changes in the Notice may affect service providers and equipment manufacturers in services for which technical standards both have and have not been established. In addition, as discussed above, the Notice requests comment on potential rule changes that may affect providers of VoIP applications over wireless technologies, as well as independent retailers and other third parties in the context of "open platform" networks.

7. The Commission states that ensuring the availability of hearing aid-compatible handsets to hard of hearing consumers, as well as information about such handsets, remains a high priority. To the extent people who use hearing aids have difficulty finding a wireless mobile telephone that functions

¹⁷ 47 C.F.R. § 20.19(a).

¹⁸ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, 8117-8122 ¶¶ 142-50 (2007) (*700 MHz Order*). The Commission also explained that it cannot impose hearing aid compatibility requirements for a band or service until applicable technical standards have been established. In recognition of the pressing need to develop applicable technical standards in certain frequency bands for which service rules have been or will soon be established, the Commission established a 24-month timetable for interested stakeholders to develop standards in these bands. *Id.*

effectively with those devices because of interference or compatibility problems, the Commission states that a continued expansion in the number and availability of hearing aid-compatible wireless telephones is warranted. It explains that its objective is to take account of changing market and technological conditions with appropriate new steps to ensure that hearing aid users will continue to benefit from the convenience and features offered by the newest wireless communications systems being provided to American consumers.

B. Legal Basis

8. The potential actions about which comment is sought in this Notice would be authorized pursuant to the authority contained in Sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 610.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.¹⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²¹ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²² To assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this Notice.

10. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.²³ The SBA has approved these definitions.²⁴ The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

¹⁹ 5 U.S.C. § 604(a)(3).

²⁰ 5 U.S.C. § 601(6).

²¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

²² 15 U.S.C. § 632.

²³ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10789 ¶ 194 (1997).

²⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

11. **700 MHz Guard Bands Licenses.** In the *700 MHz Guard Bands Order*, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.²⁵ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.²⁶ Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.²⁷ SBA approval of these definitions is not required.²⁸ An auction of 52 Major Economic Area (MEA) licenses for each of two spectrum blocks commenced on September 6, 2000, and closed on September 21, 2000.²⁹ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of remaining 700 MHz Guard Bands licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.³⁰ Subsequently, in the *700 MHz Second Report and Order*, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel).³¹ A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks.³² Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands.

12. **700 MHz Band Commercial Licenses.** There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698-757, 758-763, 776-787, and 788-793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) “small business,” which is defined as an entity that has attributed average annual gross revenues that do not exceed \$15 million during the preceding three years; and (2) “very small business,” which is defined as an entity with attributed average annual gross revenues that do not exceed \$40 million for the preceding three years.³³ In Block C of the Lower 700 MHz Band (710-716 MHz and 740-746

²⁵ See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

²⁶ *Id.* at 5343 ¶ 108.

²⁷ *Id.*

²⁸ *Id.* At 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

²⁹ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

³⁰ See “700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

³¹ See In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket 06-150, *Second Report and Order*, 22 FCC Rcd 15289, 15339-15344 ¶¶ 118-134 (2007) (*700 MHz Second Report and Order*).

³² *Id.*

³³ See Auction of 700 MHz Band Licenses Scheduled for January 24, 2008, AU Docket No. 07-157, *Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for* (continued....)

MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: an "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.³⁴ The SBA has approved these small size standards.³⁵

13. An auction of 740 licenses for Blocks C (710-716 MHz and 740-746 MHz) and D (716-722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses.³⁶ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: five EAG licenses and 251 CMA licenses.³⁷ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.³⁸

14. The remaining 62 megahertz of commercial spectrum is currently scheduled for auction on January 24, 2008. As explained above, bidding credits for all of these licenses will be available to "small businesses" and "very small businesses."

15. **Government Transfer Bands.** The Commission adopted small business size standards for the unpaired 1390-1392 MHz, 1670-1675 MHz, and the paired 1392-1395 MHz and 1432-1435 MHz bands.³⁹ Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding \$40 million as a "small business," and an entity with average annual gross revenues for the three preceding years not exceeding \$15 million as a "very small business."⁴⁰ SBA has approved these small business size standards for the aforementioned bands.⁴¹ Correspondingly, the Commission adopted a bidding credit of 15 percent for "small businesses"

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Auctions 73 and 76, DA 07-4171 at ¶ 70 (WTB rel. Oct. 5, 2007); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1087-88 (2002).

³⁴ *Id.* at 1088.

³⁵ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

³⁶ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

³⁷ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

³⁸ *Id.*

³⁹ See Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, AND 2385-2390 MHz Government Transfer Bands, 17 FCC Rcd 9980 (2002) (*Government Transfer Bands Service Rules Report and Order*).

⁴⁰ See *Service Rules Notice*, 17 FCC Rcd at 2550-51 ¶¶ 144-146. To be consistent with the size standard of "very small business" proposed for the 1427-1432 MHz band for those entities with average gross revenues for the three preceding years not exceeding \$3 million, the *Service Rules Notice* proposed to use the terms "entrepreneur" and "small business" to define entities with average gross revenues for the three preceding years not exceeding \$40 million and \$15 million, respectively. Because the Commission is not adopting small business size standards for the 1427-1432 MHz band, it instead uses the terms "small business" and "very small business" to define entities with average gross revenues for the three preceding years not exceeding \$40 million and \$15 million, respectively.

⁴¹ See Letter from Hector V. Barreto, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated January 18, 2002.